

courts to do it is to violate the very first sentence in our Constitution: 'All legislative powers herein granted shall be vested in the Congress of the United States which shall consist of a Senate and House of Representatives.' The courts have no right to alter a statutory definition; or otherwise try to make a tighter law than Congress has made. Sworn to uphold the Constitution, judges ought to be careful about engaging in judicial legislation. I can accomplish nothing here, but I feel bound to protest. I am not concerned so much about Dr. Urbuteit and his machines, which may be worthless or worse, but I am greatly concerned about unlawful perversion of the statutory law."

A petition for rehearing filed by the claimant, Fred Urbuteit, was denied on September 13, 1949, and the petition of this claimant to the Supreme Court for a writ of certiorari was denied on February 6, 1950. On April 21, 1950, upon motion of the Government, an order was entered by the United States District Court for the Northern District of Florida, directing that in lieu of destruction four of the devices be delivered to the Food and Drug Administration.

3059. Misbranding of Drown Radio Therapeutic Instrument. U. S. v. 1 Device, etc. (F. D. C. No. 28009. Sample No. 60624-K.)

LIBEL FILED: October 4, 1949, Northern District of Illinois.

ALLEGED SHIPMENT: The device and certain printed matter were transported by Edgar Rice on or about October 28, 1948, from Los Angeles, Calif., to Blue Island, Ill., and certain printed matter was shipped from Los Angeles, Calif., by the Drown Laboratories in May or June 1948, and on March 10 and April 28, 1949.

PRODUCT: 1 *Drown Radio Therapeutic Instrument* at Blue Island, Ill., together with a leaflet entitled "Drown Atlas," circulars entitled "The Drown Radio Diagnostic Therapeutic Photographic Instruments," and a diagnostic chart entitled "The Drown Radio Therapy."

Examination showed that the device was a closed box resembling a radio set, equipped with 15 dials, 3 terminal posts, and an ammeter or voltmeter.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the leaflets, circulars, and diagnostic chart were false and misleading since the device was not effective for the purposes or conditions stated or implied. The statements represented and suggested that the device was effective in forming healthy cells, measuring functions of the body, making blood counts and urinalyses, determining blood pressure, determining temperature, and diagnosing and treating diseases and abnormalities in any part of the body, including, but not limited to, kidney and bladder complications, adhesions, tipped uterus, extra kidneys, painful urination, paralysis, inability to talk, heart trouble, noises in the ear, constipation, pains in lower back, effects of scarlet fever, septicemia in left mastoid, headache, streptococcus, abscesses, loss of speech and memory, inability to digest food, vomiting bile, diseases of the glands, female organs, male organs, and blood, and colds and sore throat.

DISPOSITION: November 11, 1949. Default decree of condemnation. The court ordered that the device and the printed matter be released to the Food and Drug Administration.